THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 2905 of 2007

Oral order:

Assailing the proceedings dated 06.02.2007, passed by the 2nd respondent, namely the Secretary, appointing the 3rd respondent as Enquiry Officer, as being illegal and arbitrary, the petitioner filed the present writ petition.

The petitioner is working as Assistant Depot Manager in All India Fabrics Marketing Society Limited (hereinafter referred to as 'the Society'). While so, the petitioner was issued with charge sheet dated 12.02.2006 alleging certain irregularities. To cause an enquiry into the said charges, the 2nd respondent, issued proceedings dated 06.02.2007, appointing the 3rd respondent as Enquiry Officer. Assailing the said proceedings, the petitioner filed the present writ petition.

This Court, by order dated 15.02.2007, while admitting the writ petition, granted interim directions to the respondents to appoint either the President or Vice President of the Society as enquiry Officer, and till such time, the enquiry shall not be proceeded with.

The learned counsel for the petitioner submitted that the post of Assistant Depot Manager, in which the petitioner is working, is an officer cadre post, and as per Regulation 32 of the Staff Regulations, in the case of officers, it is only the President and in his absence the Vice President, who is competent to conduct enquiry, and as such, the 2nd respondent, who has no power or authority to conduct enquiry, could not have initiated enquiry proceedings, muchless issued impugned

proceedings dated 06.02.2007, appointing the 3rd respondent as Enquiry Officer, and the same being without jurisdiction are liable to be set aside.

The 2nd respondent filed counter. The learned Standing Counsel for the 2nd and 3rd respondents reiterated the counter averments. He has taken a preliminary objection as to the very maintainability of the writ petition. He submitted that since the society does not come within the definition of "State" defined in Article 12 of the Constitution of India, the writ petition is not maintainable, and in support of this argument, he placed reliance on the judgments of the Madras High Court in W.P.

No. 15135 of 1989, dated 24.04.1997 and of the Patna High Court in Civil Writ Jurisdiction Case No. 963 of 1992, dated 09.02.1999, whereby the writ petitions were dismissed against the respondent-society holding that the society not being a "State" as defined in Article 12 of the Constitution of India, is not amenable to writ jurisdiction. He further submitted that Regulation No. 32 of the Staff Regulations, relied upon by the petitioner, is an old Regulation, and the same was amended by the Board in its 246th meeting held on 22.10.1997, providing that in the case of officers, the enquiry shall be conducted by any person or persons authorized by the Executive Committee or President or in his absence the Vice President. He further submitted that in the instant case, the Executive Council, in its 206th meeting held on 31.01.2007, had authorized the

2nd respondent to initiate immediate necessary steps to arrange to conduct the departmental enquiry against the petitioner, and inasmuch as the 2nd respondent in pursuance of the said resolution, had issued the impugned proceedings, appointing the

3rd respondent as Enquiry Officer, he cannot be said to have no jurisdiction. Hence, he prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd and 3rd respondents-society.

The petitioner by filing the writ petition, obtained stay of the enquiry proceedings on 15.02.2007, and since then, at the request of the counsel for the petitioner, the writ petition was adjourned on five occasions, on 03.04.2007, 10.04.2007, 17.04.2007, 21.08.2007, and on 31.08.2007, the writ petition was directed to be listed under the caption "for dismissal" to today. Today, though the matter is listed under the caption "dismissal", the counsel for the petitioner is not present, however, a representation is made on his behalf by his junior, for an adjournment, which I refused to grant.

The preliminary objection taken by the counsel for the petitioner as to the maintainability of the writ petition has to be upheld in view of the judgments of the Madras High Court in W.P. No. 15135 of 1989, dated 24.04.1997 and of the Patna High Court in Civil Writ Jurisdiction Case No. 963 of 1992, dated 09.02.1999, wherein it was held that the respondent-society not being a "State" under Article 12 of the Constitution of India, is not amendable to writ petition. Hence, the writ petition is liable to be dismissed on this ground alone.

Even on merits, the writ petition is liable to be dismissed. Regulation No. 32 of the Staff Regulations, upon which the petitioner placed reliance to contend that in the case of officers, the President and in his absence the Vice-President shall conduct the enquiry, came into operation in terms of the resolution passed by the Board in its 25th meeting held on 25/26/, August, 1969. Though as per the said Regulation, the power to conduct enquiry against officers, was vested only in the President and in his absence in the Vice-President, the fact

remains, the said Regulation 32 of the Staff Regulations, was amended by the Board in its 246th meeting held on 22.10.1997, and as per the amended Regulation, in the case of officers, the enquiry shall be conducted by any person or persons authorized by the Executive Committee or President or in his absence the Vice-President. From the amended Regulation 32, it is clear that apart from the President or in his absence the Vice-President, any person or persons authorized by the Executive Council, is competent to conduct enquiry. The learned Standing Counsel for the respondents-society produced copy of the resolution passed by Executive Committee, in its 205th meeting held on 07.11.2005 at New Delhi, authorizing the 2nd respondent to conduct an enquiry against the petitioner by appointing an Enquiry Officer. Since the 2nd respondent, had sought to conduct enquiry and appointed the 2nd respondent as Enquiry Officer, in pursuance of the authorization given by the Executive Committee, as provided by amended Regulation 32 of the Regulations, the impugned order passed by the 2nd respondent, cannot be said to be without jurisdiction.

For the foregoing reasons, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Dated: 3rd September, 2007
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